Supreme Court, U.S.
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Incorporated Case 99-1463

In the

Supreme Court of the United States

Submitted March 3, 2000

October Term, 1999

In re LARRY RITCHIE JUNIOR, Sui Juris — Petitioner,

-vs-

STATE OF WEST VIRGINIA [Sued as a Person]
COUNTY OF WOOD [Sued as a Person]
CITY OF PARKERSBURG [Sued as a Person]
JOSEPH GOODWIN [Judge]
STEPTOE & JOHNSON [Sued as a Person]
W. RANDOLPH FIFE [Attorney]
PAUL A. BILLUPS [Attorney]
MUNDY & ADKINS [Sued as a Person]
BENJAMIN HUGHES [Attorney]
PULLIN, KNOPF, FOWLER & FLANAGAN [Sued as a Person]
CHARLES HADEN II [Judge]
JERRY HOGG [Magistrate]
SAMEUL KAY [Clerk] — Respondents,

Reply Brief

LARRY RITCHIE JUNIOR Sui Juris
c/o Route 2 Box 54
Marietta, Ohio 45750
Petitioner

13 pp + 1/2

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I. Abbreviations and Definitions

Fed.R.Civ.P.	=	Federal Rules of Civil Procedure
U.S.Const.Am.	=	United States Constitution Amendment
U.S.C. §	=	United States Code Section
Sup.Ct. Prac. R.	=	Supreme Court Practice Rule

II. Statement of Jurisdiction

1) Supreme Court of United States possesses Jurisdiction under Sup.Ct. Prac. R. 10 for Petition for Writ of Certiorari; Title 28 U.S.C. §1651 for Issuance of Writs enforcing Title 28 U.S.C § 1605 "Foreign Sovereign Immunity Act" and Title 28 U.S.C. § 1606 for Loss of Immunity of Officers of Court; States and Foreign States for exhaustion of all remedies for adjudication by Court of last resort.

2) Larry Ritchie Junior Petitioner's Response: Judgment by Default Fed.R.Civ.P. Rule 55 for Judgment by Default: Writ of Replevin Title 28 U.S.C. § 1651 is made timely and in Good Faith with no just cause for delay.

III. Response

3) Without Due Process of Law under 1789 U.S. Const.Am. V and XIV; Larry Ritchie Junior Petitioner was injured for knowledge of Law under Title 42 U.S.C. § 1986 for neglecting prevention of further injury(s) or wrong(s) by Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] for neglecting statement(s) claiming relief under Fed.R.Civ.P. Rule 8(a) for Statement(s) claiming Relief by Fed.R.Civ.P. Rule 7(a) for Pleading; Fed.R.Civ.P. Rule 8(b) for Form(s) of Denial or Fed.R.Civ.P. Rule 8(c) for Affirmative Defense(s) against Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by Sup.Ct.Prac.R.30 for Computation of Time under Sup.Ct.Prac.R.15(2) for waivering of

rights neglecting any contesting of fact(s) and usage of law presented within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by objection(s) within a brief in opposition by design.

4) Without Due Process of Law under 1789 U.S. Const.Am. V and XIV; Larry Ritchie Junior Petitioner was injured for knowledge of Law under Title 42 U.S.C. § 1986 for neglecting prevention of further injury(s) or wrong(s) by Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] for neglecting joinder as a Party under Fed.R.Civ.P. Rule 12(b)(7) and Fed.R.Civ.P. Rule 19 for Joinder as a Party with Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by Sup.Ct.Prac.R.30 for Computation of Time under Sup.Ct.Prac.R.15(2) for waivering of rights neglecting any contesting of fact(s) and usage of law presented within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by objection(s) within a brief in opposition by design.

5) Without Due Process of Law under 1789 U.S. Const.Am. V and XIV; Larry Ritchie Junior Petitioner was injured for knowledge of Law under Title 42 U.S.C. § 1986 for neglecting prevention of further injury(s) or wrong(s) by Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] for surrendering Judgment by Default under Fed.R.Civ.P. Rule 55 for Judgment by Default by Fed.R.Civ.P. Rule 8(d) for Effect of Failing to deny by submitting an Answer; Pleading or defense timely against Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by Sup.Ct.Prac.R.30 for Computation of Time under Sup.Ct.Prac.R.15(2)

for waivering of rights neglecting any contesting of fact(s) and usage of law presented within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by objection(s) within a brief in opposition by design.

IV. Demand For Relief

6) Larry Ritchie Junior Petitioner demands Supreme Court of United States "replevy" relief demanded within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari upon affirmative defenses of Res Judicata; Laches by Waivering of Rights and Estoppel In Pais against Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] for neglecting an Answer; Pleading or Defense timely against Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by Sup.Ct.Prac. Rule 30 for Computation of Time under Sup.Ct.Prac. Rule 15(2) for waivering of rights neglecting any contesting of fact(s) and usage of law presented within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari by objection(s) within a brief in opposition by design.

7) Any further relief Supreme Court of United States deems necessary.

V. Conclusion

8) Without Due Process of Law under 1789 U.S. Const.Am. V and XIV; Larry Ritchie Junior Petitioner was injured for knowledge of Law under Title 42 U.S.C. § 1986 for neglecting prevention of further injury(s) or wrong(s) by Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] surrendered

Judgment by Default under Fed.R.Civ.P. Rule 8(d) for Effect of Failing an Answer; Pleading or Defense timely against responsive pleading timely by Sup.Ct.Prac. Rule 30 for Computation of Time under Sup.Ct.Prac. Rule 15(2) for waivering of rights contesting any/all presentment of fact(s) and allegation(s) by objection(s) within a brief in opposition by design.

A. Facts

9) Supreme Court of United States issued no Order(s) granting relief preventing Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] submit an Answer(s); Pleading(s) or Defense(s) against Larry Ritchie Junior Petitioner's Writ of Certiorari filed March 3, 2000.

10) Sup.Ct.Prac.R. 15(1) provides Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] **need not file/submit Answer(s); Pleading(s) or Defense(s) in opposition with questions for review**.

11) Sup.Ct.Prac.R. 15(2) provides for submission of a brief in opposition with any misstatement of fact or law presented within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari filed March 3, 2000 and **warns/admonishes** Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] **of obligation** for

presenting any misstatement(s) of facts or law(s) within Larry Ritchie Junior Petitioner's Petition for Writ of Certiorari.

12) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] did **knowingly; willfully and voluntarily** waived rights of Answering; Pleading or defending against Larry Ritchie Junior Petitioner's responsive pleading filed with Supreme Court of United States March 3, 2000 entitled Petition for Writ of Certiorari.

13) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are **ripe for Judgment by Default** under Fed.R.Civ.P. Rule 55 for Judgment by Default by Fed.R.Civ.P. Rule 8(d) for Effect of Failing to deny.

B. Caveat

14) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] has **FIVE** regular business days for showing cause curing Judgment by Default under Fed.R.Civ.P. Rule 55 for Judgment by Default or Judgment by Default becomes **FINAL.**

Respectfully Submitted,

Larry Ritchie Junior Petitioner
c/o Route 2 Box 54;Marietta, Ohio 45750

APPENDIX

APPENDIX A— Affidavit in Support

Incorporated Case 99-1463

In the

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Submitted March 3, 2000

October Term, 1999

In re LARRY RITCHIE JUNIOR, Sui Juris

Petitioner,

-vs-

STATE OF WEST VIRGINIA [Sued as a Person] et al:

Respondents,

Affidavit in Support

I. Larry Ritchie Junior Petitioner deposes under pains and penalties and states following:

1) Larry Ritchie Junior Petitioner is Affiant within Affidavit in Support of Response: Judgment by Default under Fed.R.Civ.P. Rule 55: Writ of Replevin Title 28 U.S.C. § 1651.

2) Affiant's Affidavit in Support of Response: Judgment by Default under Fed.R.Civ.P. Rule 55: Writ of Replevin Title 28 U.S.C. § 1651 are made timely and in Good Faith with no just cause for delay.

3) Affiant is over age of twenty-one and competent for testifying.

4) March 3, 2000; Affiant filed Petition for Writ of Certiorari with Supreme Court of United States directed against Court of Appeals of United States Fourth Circuit and United States District Court, Southern District of West Virginia for certification of record for review.

5) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a

Appendix A

Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] possessed thirty days for Answering; Pleading or Defending against Affiant's Petition for Writ of Certiorari filed March 13, 2000.

6) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] did knowingly, willfully and voluntarily waivered right(s) of answering; pleading or defending against Affiant's Petition for Writ of Certiorari.

7) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are barred by laches from asserting Answer(s) Pleading(s) or Defense(s) against Affiant's Petition for Writ of Certiorari.

8) Supreme Court of United States issued no order granting Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] relief against asserting Answer(s); Pleading(s) or Defenses against Affiant's Petition for Writ of Certiorari.

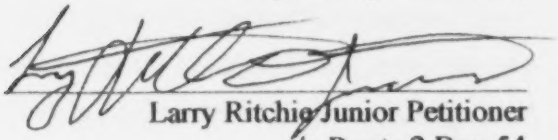
Appendix A

9) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are in Default and ripe for Judgment under Fed.R.Civ.P. Rule 55 for Judgment by Default by Fed.R.Civ.P. Rule 8(d) for Effect of Failing to deny and Sup.Ct.Prac.R. 15(2) for admonishing/warning Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] of obligation of presenting any misstatement of Fact(s) or Law(s) within a Brief of Opposition and no presentment of a Brief in Opposition deems Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] has waivered rights and admitted all statement of facts and of law presented within Affiant's Petition for Writ of Certiorari are true and correct.

10) All presentment of facts within Affiant's Response: Judgment by Default under Fed.R.Civ.P. Rule 55: Writ of Replevin Title 28 U.S.C. § 1651 and Affidavit in Support are very best Affiant's knowledge, So help me God.

Appendix A

Respectfully Submitted,



Larry Ritchie Junior Petitioner
c/o Route 2 Box 54
Marietta, Ohio 45750

Subscribed under Oath before me 6 day of April 2000 Anno Domini.

Amanda J. Phillips
Notary

My Commission Expires _____

AMANDA J. SHANKLAND
Notary Public
In and For The State of Ohio
My Commission Expires May 18, 200

Incorporated Case 99-1463

In the

Supreme Court of the United States

Submitted March 3, 2000

October Term, 1999

In re LARRY RITCHIE JUNIOR, Sui Juris

Petitioner,

-vs-

STATE OF WEST VIRGINIA [Sued as a Person] et al

Respondents,

Affidavit of Truth

I. Larry Ritchie Junior Petitioner deposes under pains and penalties and states following:

1) Larry Ritchie Junior Petitioner is Affiant within Affidavit in Support of Response: Judgment by Default: Writ of Replevin Title 28 United States Code Section 1651.

2) Affiant's Affidavit of Truth is made timely and in Good Faith with no just cause for delay.

3) Affiant is over age of twenty-one and competent for testifying.

4) March 3, 2000; Affiant filed Petition for Writ of Certiorari with Supreme Court of United States directed against Court of Appeals of United States Fourth Circuit and United States District Court, Southern District of West Virginia for certification of record for review.

5) March 3, 2000; Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] received service of Affiant's responsive pleading entitled "Petition for Writ of Certiorari" {See execution of return of service marked as "Petitioner's Exhibit A"}.

5) March 13, 2000; Steven McGovan counsel of record for Respondents State of West Virginia [Sued as a Person], Steptoe & Johnson [Sued as a Person] and W.

Randolph Fife [Attorney] knowingly, willfully and voluntarily surrendered Respondents State of West Virginia [Sued as a Person], Steptoe & Johnson [Sued as a Person] and W. Randolph Fife [Attorney] rights of Answering; Pleading or Defending against Affiant's responsive pleading entitled "Petition for Writ of Certiorari" filed March 3, 2000 with Supreme Court of United States by submission of a Waiver {See waiver submitted by Respondents marked as "Petitioner's Exhibit B"}.

6) March 20, 2000; William Mundy counsel of record for Respondents Mundy and Adkins [Sued as a Person]; City of Parkersburg [Sued as a Person] and Paul Billups [Attorney] knowingly, willfully and voluntarily surrendered Respondents Mundy and Adkins [Sued as a Person]; City of Parkersburg [Sued as a Person] and Paul Billups [Attorney] rights of Answering; Pleading or Defending against Affiant's responsive pleading entitled "Petition for Writ of Certiorari" filed March 3, 2000 with Supreme Court of United States by submission of a Waiver {See waiver submitted by Respondents marked as "Petitioner's Exhibit C"}.

7) March 27, 2000; Kenneth Knopf counsel of record for Respondents County of Wood [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person] and Benjamin Hughes [Attorney] knowingly, willfully and voluntarily surrendered Respondents County of Wood [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person] and Benjamin Hughes [Attorney] rights of Answering; Pleading or Defending against Affiant's responsive pleading entitled "Petition for Writ of Certiorari" filed March 3, 2000 with Supreme Court of United States by submission of a Waiver {See waiver submitted by Respondents marked as "Petitioner's Exhibit D"}.

8) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] possessed thirty days for Answering; Pleading or Defending against Affiant's Petition for Writ of Certiorari filed March 3, 2000.

9) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] did knowingly, willfully and voluntarily waivered right(s) of

answering; pleading or defending against Affiant's Petition for Writ of Certiorari for sustaining Judgment by Default under Fed.R.Civ.P. Rule 55 for Judgment by Default against a responsive Pleading by Fed.R.Civ.P. Rule 8(d) for Effect of Failing to deny.

10) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] did knowingly and willfully neglect joinder as Parties under Fed.R.Civ.P. Rule 12(b)(7) and Fed.R.Civ.P. Rule 19 for Joinder as Parties with Affiant's responsive pleading entitled "Petition for Writ of Certiorari" filed March 3, 2000 by Sup.Ct.Prac.R. 30 for Computation of Time under Sup.Ct.Prac.R. 15(2) for waivering of rights contesting any/all presentment of fact(s) and allegation(s) by objection(s) within a brief in opposition by design.

11) Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are in Default.

12) Supreme Court of United States does entertain Jurisdiction over Subject Matter and over all Parties by "Accord and Satisfaction" of Sup.Ct.Prac.R. 10 for Petitioning Supreme Court of United States for Writ of Certiorari and Fed.R.Civ.P. Rule 4 for Service of Process upon all Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] by prepaid postage United States Certified Mail.

13) Affiant believes State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are not members of any Armed Forces of United States of America.

14) Affiant believes all Respondents State of West Virginia [Sued as a Person]; County of Wood [Sued as a Person]; City of Parkersburg [Sued as a Person]; Steptoe and Johnson [Sued as a Person]; Mundy and Adkins [Sued as a Person]; Pullin, Knopf, Fowler and Flanagan [Sued as a Person]; Benjamin Hughes [Attorney]; Paul Billups [Attorney] and W. Randolph Fife [Attorney] are competent.

15) All presentment of facts within Affiant's Affidavit of Truth are very best of Affiant's knowledge, So help me God.

Respectfully Submitted,

Larry Ritchie Junior Petitioner
c/o Route 2 Box 54
Marietta, Ohio 45750

Subscribed under Oath/Affirmation before me 6 day of April 2000.

Notary

My Commission Expires

AMANDA J. SHANKLAND
Notary Public
In and For The State of Ohio
My Commission Expires May 18, 2002

precedent to support its claim of prejudice due to this change in insurance status. The Supreme Court, however, has staked out a different definition of prejudice: "the death or absence of a material witness" or "any substantial diminution of a party's ability to properly present its case at trial." *Jacobs v. Halloran*, 1998 Pa. LEXIS 583, *14 (Apr. 2, 1998). *See also*, *Biondillo v. Dept. of Trans.*, 674 A.2d 1175, 1178 (Pa. Cmwlth. 1996) (prejudice for purposes of non pros is "any substantial diminution in a party's ability to properly present a case").

Upon analysis of these considerations, the precedent cited, and the record presented, the plaintiffs in the *Durante* and *Johnson* cases have presented sufficient evidence of attorney neglect to allow the opening of judgments in these cases.

4. *The Unique Case of Martino v. Panichelli*

In their Petition,[73] plaintiffs argue that the "proper cause" standard clearly applies to the case of *Martino v. Panichelli*

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73. Defendants Panichelli et al. responded to plaintiffs' Petition with both an Answer and a Motion to Dismiss. In their motion to dismiss, defendants argue (1) that the petition should be dismissed under Rule 1032(a) for failure to state a cause of action since Pa.R.C.P. 1007 provides only 2 ways to commence a cause of action (complaint or summons) and (2) that the petition is an impermissible attack on a final order since 42 Pa.C.S.A. §5505 limits reconsideration of a final order to 30 days. Various other defendants have raised the first procedural objection and, in the interest of judicial economy they are discussed together in section (C.2) *supra*. The second argument, raising the limits set forth in 42 Pa.C.S.A. §5505, has necessarily been addressed in the substantive analysis of this opinion, section (B.2) *infra*.

because it "was dismissed by order of discontinuance, based on Mr. Smith's failure to file a complaint."[74] Unfortunately, the procedural context of this case is more complicated than plaintiffs suggest.

Martino v. Panichelli is a legal malpractice action against Michael Panichelli and the law firm of Litvin, Blumberg, Matusow & Young on behalf of plaintiff John Martino whose malpractice action against several doctors was dismissed on summary judgment for failure to present an expert witness.[75] After Mr. Martino's medical malpractice action was dismissed, he initiated the action against Panichelli when his attorney, Thomas Smith, filed a Writ of Summons on September 12, 1996. Both parties concede that a Rule to File a Complaint within 20 days was filed *sua sponte* by court Order dated April 17, 1997. Counsel were further ordered to appear before the Day Forward team leader on May 19th. The Order then provided:

> If a complaint is filed within 20 days from the date of this Order said appearance is for the purpose of conducting a Case Management Conference, otherwise said appearance is for the entry of an appropriate Judicial order for failure to prosecute.[76]

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74. Plaintiffs' Petition, Memorandum at 11.

75. Answer of Defendant Panichelli re: *Martino*, Memorandum at 1-2.

76. Answer of Defendant Panichelli re: *Martino v. Panichelli*, Ex. "C." *See also* Ex. "E," Affidavit of Charles Young, Esquire, ¶ 12.

Defendants state that after this Order by Judge Sheppard was entered, they reached an oral agreement with Mr. Smith that he would provide defendants "with a copy of an expert's report by June 20, 1997 or the *above mentioned matter will be dismissed with prejudice.*" Defendants affix a copy of May 19, 1997 letter to Mr. Smith that sets forth this oral agreement. *See* Defendants' Answer, Ex. "D". The Rule Returnable date for the April 17th Order was rescheduled for June 23, 1997. At that point, both parties agree, the Order had not been complied with, and the Court ordered the action discontinued. Both parties also agree that Judge Sheppard, while discontinuing the case, did not do so with prejudice. Instead, he asked defense counsel to notify Mr. Smith that he had ten days in which to get the Order of dismissal withdrawn.[77]

On July 23, 1997 the Court issued the following order:

> And Now, this 23rd day of July, 1997, it is hereby ORDERED and DECREED that the case of *Martino v. Panichelli*, September Term 1996, No. 502 is hereby *dismissed with prejudice*. Defendants' Answer, Ex. "A" (emphasis added).

Despite the clear language of the July 23, 1997 Order *dismissing* the entire *Martino* case with prejudice, plaintiffs baldly assert:

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77. Plaintiffs' Reply, Memorandum at 2-3 (referencing docket entries). Defendants' Answer, Ex. "E," Affidavit of Charles Young, ¶¶ 16-17.

> In sum, there is no colorable question as to the nature of the judgment in *Martino*. The case was dismissed "for failure to prosecute. *Id.* [Defendants' Memorandum], Exhibit "C." It was a judgment of non pros.[78]

In making this assertion, plaintiffs' cite Defendants' Exhibit "C," the April 17th Order, stating that if counsel failed to file a complaint an "appropriate Judicial order for failure to prosecute would be ordered." In so doing, however, they fail to grapple with the very precise words of the July 23, 1997 Order, which provided that "the case of *Martino v. Panichelli et al.*, September Term 1996, No. 502 is hereby dismissed with prejudice."[79]

As an initial step, it is necessary for this Court to determine the legal implications of Judge Sheppard's July Order so that the appropriate standard of review can be applied. This is a delicate inquiry since, under the rule of coordinate jurisdiction, a judge may not overrule the same order of a coequal judge absent new facts or precedent. *Goldey v. Trustees of the Univ. of Pa.*, 544 Pa. 150, 675 A.2d 264, 267 (1996). Clearly, plaintiffs have presented new facts in their Omnibus Petition seeking to open this judgment on the basis of Mr. Smith's professional dereliction. It is permissible for this Court to consider these new facts as they relate to opening the relevant July 23 Order in this case. It would not be permissible, however, for this Court to subvert

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78. Plaintiffs' Reply re: *Martino*, Memorandum at 3.

79. Defendants' Answer re: *Martino*, Ex. "A".

the intent or legal import of that Order by mischaracterizing a final order of dismissal as a non pros, and thereby applying an incorrect standard of review.

It is, of course, quite common for courts to issue judgments of non pros for failure to file a complaint, but in those cases the relevant orders were cast in terms of non pros. *See, e.g. Broglie v. Union Township*, 319 Pa. Super. 141, 465 A.2d 1269 (1983) (court ordered judgment of non pros for failure to file amended complaint) . Non pros may also be obtained by filing a praecipe after the issuance of a Rule to File a Complaint but, once again, that order is cast in terms of non pros. *See, e.g., Esslinger v. Sun Refining and Marketing*, 379 Pa. 69, 549 A.2d 600, 602 (1988).

Non pros may be ordered not only for failure to file a complaint, but also for failure to comply with court orders compelling response to discovery requests. *See, e.g., Lawrence v. General Medicine Assoc.*, 412 Pa. Super. 163, 602 A.2d 1360, 1361 (1992) (court ordered judgment of non pros for failure to respond to discovery requests). Indeed, when confronted with these early pretrial issues, courts have the discretion to dismiss a case for failure to respond to discovery requests. *See, e.g., Luckenbaugh v. Shearer*, 362 Pa. Super. 9, 523 A.2d 399 (1987), *app. denied*, 518 Pa. 626, 541 A.2d 1138 (1988) (plaintiffs' case dismissed with prejudice for failure to answer interrogatories); *Simpson v. Allstate Ins.*, 350 Pa. Super. 239, 504 A.2d 335 (1986) (trial court ordered Prothonotary to enter judgment for failure to comply with discovery order). When cases are dismissed with prejudice in such an adversarial setting, there must be a showing of prejudice or extraordinary cause before they can

be opened. *See*, *Simpson*, *supra*, 504 A.2d at 337-38; *Luckenbaugh*, *supra*, 523 A.2d at 401.

Finally, Pa.R.C.P. 1037(c), dealing with Judgments by Default, suggests the discretion and options available to a judge in cases of "default" or non pros, since it provides not only for procedures involving the entry of a judgment of non pros by filing a praecipe with the prothonotary but also provides:

> In all cases, the court, on motion of a party may enter *an appropriate Judgment* against a party upon default or admission. Pa.R.C.P. 1037(c) (emphasis added).

What is significant about these cases and Rule 1037(c) is the degree of discretion provided to a court. It is thus imperative to consider carefully the precise wording of an order to determine its implications. In this regard, the July 23 Order is unmistakably clear: it dismissed the *Martino* case with prejudice. It thus cannot be opened merely for proper cause shown; rather, plaintiffs must establish the requisite fraud or "extraordinary cause."

There is, however, the same evidence of Mr. Smith's abandonment of the *Martino* case that plaintiffs have pointed to regarding other cases throughout their petition — in the defendants' own documents. Defendants cite, for instance, a May 19th letter from defense counsel Charles Young to Mr. Smith confirming an oral agreement that he would provide an expert report by June 20, 1997 or the *Martino* case would be subjected to the extreme sanction of dismissal

with prejudice. Defendants' Answer, Ex. "D." In his affidavit, Charles Young stated that he had informed Mr. Smith that Judge Sheppard had given him 10 days in which to seek withdrawal of the June 23 dismissal order in this case but:

> Mr. Smith never requested that the dismissal be withdrawn and on July 23, 1997, I wrote Judge Sheppard a letter [Exhibit "C"] requesting that the court sign an order of dismissal. Defendants' Answer, Ex. "E," Affidavit of Charles Young, ¶ 17.

This failure of Mr. Smith to respond to the Court's invitation to seek removal of the adverse judgment is certainly consistent with the pattern of professional dereliction that is the basis for opening the eight final, adversarial judgments previously discussed.

5. *Request for Extension of Discovery Deadlines in Folger v. Dugan and Harris v. Chestnut Hill Hospital*

In their Omnibus Petition, plaintiffs request new scheduling orders for discovery in three cases that have not been dismissed but in which, they allege, Mr. Smith failed to conduct necessary discovery: *Folger v. Dugan*, July Term, 1996, No. 1010; *Harris v. Chestnut Hill Hosp.*, October 1995, No. 3221 and *Joyner v. Patterson*, May 1994, No. 964. [The *Joyner* case has been withdrawn from the Petition by letter dated June 11, 1998.] Plaintiffs have detailed the reasons

why a new scheduling order in both *Folger* and *Harris* should issue, while various defendants have opposed any extension.

In *Folger*, a medical malpractice case brought on behalf of a brain damaged infant, plaintiffs seek a new scheduling order because, they assert, Mr. Smith did not depose any of the five defendant doctors. Moreover, he failed to obtain an expert report. *See* Plaintiffs' Petition, ¶ 8b. The various defendants who responded do not deny that Mr. Smith did not conduct the discovery that plaintiffs' claim is essential for presenting a viable claim. Instead they emphasize plaintiffs' procedural irregularities and the prematurity of this petition because all discovery did not have to be completed until February 2, 1998. Defendants do not point to any specific prejudice they would suffer if the deadlines were extended. Defendant Frankford Hospital, for instance, vaguely states that "Defendants will be prejudiced if this case is further delayed." Defendant Dr. Moughan maintains that "further delay caused by another extension of the Case Management deadlines in this case will prejudice respondent." Finally, defendants Dr. Erica Turner and St. Christopher's Hospital state that they "will be prejudiced by the grant of extraordinary relief" without specifying the nature of this prejudice other than the "passage of time."[80]

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80. *See* Answers of defendant Beth Moughan re: *Folger*, Memorandum at 2-3; Defendant Frankford Hospital, Memorandum at 4. Frankford Hospital admits that no discovery depositions were taken. *Id.* at 1. *See generally*, Answer of Defendant Dr. Theresa Dugan; Answer of Dr. Erica Turner and St. Christopher's Hospital, Memorandum at 12.

Appendix A

In the *Harris* case, a medical malpractice action involving an alleged delay in diagnosing cancer, plaintiffs assert that they require a new discovery schedule because Mr. Smith conducted no depositions in this case. Although he did obtain an expert report, he failed to provide the expert with evidence critical to a failure to diagnose case — pathology slides. Plaintiffs further claim that the most critical missing piece in their discovery — the pathology slides — could be completed almost immediately.[81] Defendants Chestnut Hill Hospital and Dr. Ru-Lin Ko Tung, M.D., et al. do not dispute plaintiffs' description of the state of discovery in this case but they point out that Mr. Smith served a request for admissions on Dr. Tung, Chestnut Hill Hospital and Chestnut Hill Pathology. Moreover, defendants claim that they will have difficulty defending this case because of the passage of time. Answer of Defendants Chestnut Hill Hosp., et al re: *Harris*, Memorandum at 2-3, 12.

The Pennsylvania Supreme Court in *Feingold v. SEPTA*, 512 Pa. 567, 517 A.2d 1270, 1272 (1986), cautioned that its "approach to the enforcement of procedural rules, whether local or state-wide, is dictated by the facts and circumstances of each individual case." In setting forth a four-part test for determining when testimony of an expert witness could be excluded, it called for the analysis of prejudice to the various parties, the ability to cure this prejudice, whether the progress of a trial would be disrupted, and the willfulness or bad faith of a party. *Id.*, 517 A.2d at 1273. Other courts, when

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81. Plaintiffs' Petition, ¶8(c); Plaintiffs' Reply to defendants Chestnut Hill Hospital and Ru-Lin Ko Tung, M.D. re: *Harris*, Memorandum at 6.

grappling with discovery issues, have applied the *Feingold* approach, focusing on the facts of each case and the potential prejudice to all parties. *See, e.g., Curran v. Stradley, Ronon, Stevens & Young*, 361 Pa. Super. 17, 521 A.2d 451 (1987).

Applying these principles, the serious prejudice that the plaintiffs in *Folger* and *Harris* will encounter because of their counsel's failure to conduct adequate discovery far outweighs the vague claims of prejudice by the defendants if the discovery deadlines are extended. *See, e.g., Curran, supra*, 521 A.2d at 458 (Trial court erred in precluding expert witness identified 9 days prior to trial because "[i]n balancing the *Feingold* factors as they relate to each party, we conclude that the prejudice to Stradley substantially outweighs the potential prejudice to Panaccion"). In their Petition and replies, the plaintiffs in *Folger* and *Harris* have pointed to specific discovery necessary to their case. They have offered a compelling explanation for why this discovery was not completed — Mr. Smith's pattern of progressive abandonment of his cases during a discrete period. They have posed their request long before any trial; indeed, plaintiffs indicate that the *Folger* case has yet to be listed for trial. They also specifically identify how an inability to conduct this discovery would have a devastating impact on their case. In contrast, defendants have alleged only vague claims of prejudice.

These facts contrast markedly to those of *Stewart v. Rossi*, 452 Pa. Super. 120, 681 A.2d 214 (1996), *app. denied*, 547 Pa. 731, 689 A.2d 235 (1997), which is cited by defendants Dr. Turner and St. Christopher's Hospital in the *Folger* case and defendants Chestnut Hill Hospital and Dr.

Ru-Lin Ko Tung in the *Harris* case. In *Stewart*, the Superior Court affirmed the trial court's grant of summary judgment based on plaintiffs' failure to conduct discovery. A subsidiary issue involved whether the trial court had properly denied plaintiffs' last minute petition for extraordinary relief. In concluding that it was proper to deny this petition, the *Stewart* Court noted that plaintiffs had waited until "just prior to trial" to file it after conducting no discovery. Moreover, the Court more generally emphasized that because of plaintiffs' bad faith (i.e., failure to answer interrogatories carefully or to identify witnesses), the defendant was prejudiced in his ability to prepare a defense.

In the instant Petition, in contrast, plaintiffs seek additional discovery well in advance of trial. Defendants ability to prepare a defense should not, therefore, be prejudiced. The prior scheduling orders for these cases are therefore vacated and a new case management conference shall be scheduled promptly.

C. *PROCEDURAL ISSUES RAISED IN DEFENDANTS' PRELIMINARY OBJECTIONS AND MOTION TO DISMISS*

Preliminary Considerations: Rule of Coordinate Jurisdiction

As a preliminary issue, the rule of coordinate jurisdiction should be addressed. It is well established that judges of coequal jurisdiction should not overrule each other on the same motion in the same case. *Klein v. Weisberg*, 694 A.2d 644, 646 1997 Pa. Super. LEXIS 993 (Pa. Super. 1997), *app.*

denied, 1998 Pa. LEXIS 1134 (Pa. June 1998). There are, however, exceptions to this rule where a judge is presented with new facts or new precedent "that clearly warrant a new look at the question." *Riccio v. American Rep. Ins. Co.*, 705 A.2d 422, 425 1997 Pa. LEXIS 2735 (Pa. 1997). In addition, a co-equal judge may also make a different ruling on motions that are procedurally distinct such as summary judgment motions and preliminary objections. *Domenick v. Mercy Hosp.*, 446 Pa. Super. 313, 673 A.2d 959, 961 (1996).

Plaintiffs' Petition to Open Judgments presents this Court with facts that were not presented to the judges who originally entered judgments in the cases set forth in the Petition. The full significance of plaintiffs' new facts, moreover, emerges only with the benefit of an global view of the cases presented in this Petition. It is the pattern presented in these cases that is most compelling. The interests of judicial economy — and justice — are thus best served by having a single judge rule on this Petition.

1. *Preliminary Objections filed by Defendants in the Cunningham Case*

Defendants in the *Cunningham* case, KRN Associates, Dr. Arnold Kessler, Dr. Binder, Dr. Rubin, Dr. Hooshang Nikoo and Dr. Stephen Kessler, filed Preliminary Objections to the Omnibus Petition to Open Judgment. The Rules for Civil Procedure, however, do not provide for the filing of preliminary objections to a petition. Pennsylvania Rules of Civil Procedure 206.1 through 206.7 relate specifically to petitions. Rule 206.1 thus outlines the criteria for a petition, while Rule 206.2 provide for an "Answer" in response to a

petition. In the interest of judicial economy, and since plaintiffs have responded to the preliminary objections, this Court will address the substance of the preliminary objections. *Moran v. Paine, Webber, Jackson & Curtis*, 422 Pa. 66, 220 A.2d 624, 627, n.2 (1966).

Defendants initially object to the use of a petition to open a judgment. While, at first, this objection seemed to address procedural incorrectness, in fact these defendants pose the same substantive argument relating to the restrictions set by 42 Pa. C.S.A. §§ 5505 as to this Court's lack of jurisdiction to open the final judgment in this case.[82] Since this issue already has been addressed in Section (B.2), it will not be revisited.

Defendants also raise a more procedural, technical argument that the Petition is improperly verified and should thus be stricken. For the following reasons, this request must be denied as too extreme.

The rules relating to petitions require that "a petition or an answer containing an allegation of fact which does not appear of record shall be verified." Pa.R.C.P. 206.3 The note to this rule references Pa.R.C.P. 76 for a definition of 'verification'. "Verified," according to Pa.R.C.P. 76, "when used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities." Pa.R.C.P. 76.

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82. Preliminary Objections of Defendants KRN Associates et al. re: *Cunningham*, Memorandum at II.A. (unnumbered memo).

Appendix A

The rules relating to verification of a petition or an answer to a petition were adopted in September, 1995, effective January 1, 1996. Defendants, however, cite a case decided in 1980, *Rupel v. Bluestein*, 280 Pa. Super. 65, 421 A.2d 406 (1980), in support of the argument that the Petition should be dismissed because the verification is improper. Plaintiffs also cite relatively old cases. It is therefore necessary to turn to this precedent.

Although a petition is not a pleading, the Superior Court has focused on Pa.R.C.P. 1024, which relates to verification of complaints, for guidance on the proper verification for a petition. *Monroe Contract Corp. v. Harrison Square, Inc.*, 266 Pa. Super. 549, 405 A.2d 954, 957 (1979). Rule 1024 provides, in relevant part, that:

> The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of his information as to matters not stated upon his own knowledge and the reason why the verification was not made by a party. Pa.R.C.P. 1024(c).

Defendants argue that the verification is improper because "the Cunninghams have failed to submit any